IN RE GAN EU GIN & ANOR

HIGH COURT MALAYA, SHAH ALAM
HAYATUL AKMAL ABDUL AZIZ JC
[JOINT DIVORCE PETITION NO: 33JP-217-03-2018]
2 NOVEMBER 2018

FAMILY LAW: *Marriage – Divorce – Joint petition for divorce – Court ordered marriage to be dissolved – Decree nisi made absolute upon expiry of three months from date of order – Application by wife to set aside decree nisi – Whether decree nisi absolute – Whether decree nisi which was made absolute could be set aside – Whether three-month period granted by court had lapsed – Whether court could abridge or enlarge time period – Whether marriage between petitioners legally dissolved – Whether there were lawful and appropriate extenuating circumstances to enable court to exercise powers to set aside decree nisi – Law Reform (Marriage and Divorce) Act 1976, ss. 52 & 61 – Divorce and Matrimonial Proceedings Rules 1980, rr. 53 & 100*

CIVIL PROCEDURE: *Setting aside – Petition – Joint petition for divorce – Court ordered marriage to be dissolved – Decree nisi made absolute upon expiry of three months from date of order – Application by petitioner wife to set aside decree nisi – Whether decree nisi absolute – Whether decree nisi which was made absolute could be set aside – Whether three-month period granted by court had lapsed – Whether court could abridge or enlarge time period – Whether marriage between petitioners legally dissolved – Whether there were lawful and appropriate extenuating circumstances to enable court to exercise powers to set aside decree nisi – Rules of Court 2012, O. 92 r. 4*

The petitioners were husband and wife who presented a joint petition for divorce ('the petition'). Satisfied that the petitioners had met the threshold for divorce, under s. 52 of the Law Reform (Marriage and Divorce) Act 1976 ('the LRA'), the court granted an order in terms of the prayers. The marriage was then ordered to be dissolved and the court ordered that the decree of divorce ('decree *nisi*') shall be made absolute upon expiry of three months unless sufficient reasons be given, within that three months from the date of the order dated 5 April 2018, why the decree *nisi* ought not to be made absolute. The date of the expiration of the three-month period fell on 4 July 2018. However, on 4 July 2018, the petitioner wife ('the PW') filed the present application, pursuant to s. 61 of the LRA and/or under O. 92 r. 4 of the Rules of Court 2012 ('the ROC') to set aside the decree *nisi* on the grounds that (i) the terms in the petition were not favourable to her; (ii) she was not properly advised by the solicitor for the petition; and (iii) she was forced to agree to the said terms ('encl. 13'). The PW further sought for stay of the decree *nisi* and other prayers pending the determination of encl. 13. The issue that arose for adjudication was whether the decree *nisi*, which was made absolute on 4 July 2018, could be set aside on the grounds of inadequacy of counsel. In support of encl. 13, the PW submitted that (i) the

application was filed before the said decree *nisi* was made absolute; (ii) under r. 53 of the Divorce and Matrimonial Proceedings Rules 1980 ('DMPR'), a decree is only made absolute upon the lodging of a notice in Form 8 and, in the present case, the PW had filed encl. 13 before filing Form 8; (iii) since the decree *nisi* was granted on 5 April 2018, the three-month period should fall on 5 July 2018; (iv) encl. 13 was filed on 4 July 2018, before the three-month lapse and therefore, the merits of the case ought to be heard by the court; and (v) r. 100 of the DPMR gives the court the power for enlargement of time by either extending or abridging the time limited for doing any act, as long it is just for doing so, and encl. 13 was not prejudicial to the petitioner husband ('the PH'). Objecting against encl. 13, the PH submitted that (i) the PW could not proceed with encl. 13 as the decree *nisi* was granted based on the consent given by both petitioners when they filed the petition; and (ii) encl. 13 was an abuse of court process which had the effect of re-litigating the petition.

Held (dismissing encl. 13):

(1) The PW applied to set aside the decree *nisi* under s. 61 of the LRA. However, s. 61 does not apply to joint petitions under s. 52 of the LRA, as in the present case, but it only applies to single petitions under s. 53 of the LRA. The words of s. 61(2) of the LRA denotes that there are two opposing parties in the decree *nisi ie* the words 'by the party to whom it was granted' and 'the party could have made' refer to the petitioner in a divorce petition while 'the party against whom it was granted' refer to the respondent in a divorce petition. (para 18)

(2) The marriage between the petitioners was legally dissolved on 4 July 2018 *ie* upon the expiry of the three-month period after the decree *nisi* was granted. The application in Form 8 of the DPMR is merely a formality to complete the divorce proceedings. The decree *nisi* had become absolute. There is no provision in the LRA for the rescinding or setting aside of a decree *nisi* that had been made absolute. Justice applies both ways and by setting aside an order that was perfected and sealed, the court will be unjust to the PH. There must be lawful and appropriate extenuating circumstances to enable the court to exercise its powers and, in this case, no such circumstances were presented. (para 19)

(3) A sealed copy of the certificate of making decree *nisi* absolute (Form 9) by the Senior Assistant Registrar of the High Court confirmed that the decree *nisi* had become absolute on 4 July 2018 and the said certificate, to date, had not been set aside or challenged and remained valid. The PW waited until the last minute to file encl. 13 when the same could have been done with greater haste within the three-month period before the decree *nisi* became absolute. The three-month period was reasonable enough to allow parties to appraise their respective situation prior to the

absolute dissolution of the said marriage taking place. It was a time period prescribed by the LRA. Furthermore, the court was empowered to grant a lesser waiting period but not more that was is prescribed by s. 61(1) of the LRA. Therefore, the issue of abridging or enlarging the time period did not arise. (paras 19 & 20)

Case(s) referred to:

Abdul Razak Sheikh Mahmood & Ors v. Amanah Raya Bhd & Ors And Another Appeal [2018] 5 CLJ 273 CA ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

In Re Ng Boon Chwee & Anor [2018] 1 LNS 744 HC ***(foll)***

Lah Ah Chai v. Chong Mee Ling [2004] 1 LNS 641 HC ***(refd)***

Liew Nyuk Ching v. Jong Khee Kie [2013] 4 MLJ 930 ***(refd)***

Low Choon Kung v. Tham Chan Kum [2004] SGDC 139 ***(refd)***

Ng Say Chuan v. Lim Szu Ling [2010] 10 CLJ 371 HC ***(refd)***

Suci Mathews Nee Suci Thomas v. Thomas Mathews [1985] 2 CLJ 496; [1985] CLJ (Rep) 788 HC ***(refd)***

Wong Cheng Ping v. Chin Guan Seng [2009] 1 LNS 1627 HC ***(refd)***

Legislation referred to:

Divorce and Matrimonial Proceedings Rules 1980, rr. 53, 100

Law Reform (Marriage and Divorce) Act 1976, ss. 52, 53, 61(1), (2)(b)

Rules of Court 2012, O. 92 r. 4

For the petitioner wife - Gan Siew Guat & Gan Chu Ping; M/s Yong & Rakan Rakan
For the petitioner husband - S Ravichandran & Lee Shu Min; M/s Seah Balan Ravi & Co

Reported by Najib Tamby

JUDGMENT

Hayatul Akmal Abdul Aziz JC:

Introduction

[1] This is an application (encl. 13) filed by the second petitioner (petitioner wife ("PW")) under s. 61 of Law Reform (Marriage and Divorce) Act 1976 ("the Act") and/or under O. 92 r. 4 of the Rules of Court 2012 ("RC 2012). Among the prayers is to set aside the decree *nisi* dated 5 April 2018 ("the said decree *nisi*") that had already become absolute three months after the said decree *nisi* was granted. PW is also asking for stay of the said decree *nisi* and other prayers pending the determination of this application.

[2] The relevant cause papers and written submissions, are as follows:

(i) enclosure 13: The application filed on 4 July 2018;

(ii) enclosure 14: PW's affidavit in support affirmed by Ng Sin Yin on 4 July 2018;

(iii) enclosure 28: PH's affidavit in reply affirmed by Gan Eu Gin on 30 July 2018;

(iv) enclosure 29: PW's affidavit in further reply affirmed by Ng Sin Yin on 7 August 2018;

(v) enclosure 34: solicitor's affidavit affirmed by Kam Booi Keong on 9 August 2018;

submissions/submissions in reply by PW and PH.

[3] This application was heard before me on 10 August 2018 and after perusing the cause papers filed, respective written submissions of the parties, I dismissed the said application with no order as to cost. Dissatisfied, PW had filed this appeal and my reasons are as follows.

Brief Facts

[4] PH and PW were legally married on 10 September 2011 and were blessed with two boys, name Covell Gan Junn Yett Tan (7+ years old) and Ayden Gan Junn Lerr (5+ years old) and together they will be referred to as "the said children". On 16 March 2018, PH and PW had jointly presented a joint petition for divorce and this court fixed 5 April 2018 for hearing of the said petition. Both PH and PW were represented by counsel and on 5 April 2018 both were present in open court and the terms in the prayers were read out by the learned counsel. This court was satisfied that both PH and PW understood the prayers as prayed and had freely consented to the filing of the joint petition for divorce and this court was also satisfied that the filing of the joint petition for divorce had met the requirement of the expiration of two years from the date of the marriage. Therefore, the threshold for the petitioners to seek a divorce decree pursuant to s. 52 of the Act was met and this court granted an order in terms of the prayers as prayed. This court ordered that the marriage be dissolved, and further ordered that the decree of divorce (or decree *nisi*) shall be made absolute upon expiry of three months unless sufficient reasons be given to the court within that three months from the date of the order dated 5 April 2018 why the decree *nisi* ought not to be made absolute. The date of the expiration of the three-month period fell on 4 July 2018.

[5] However, on 4 July 2018 the PW had filed this application to set aside the said decree *nisi* over allegation that the terms in the said joint petition for divorce were not favourable to her, she now alleges that she was forced to agree to the said terms and neither was she properly advised by the acting solicitor for the said petition.

Issue To Be Tried

[6] Whether the decree *nisi* dated 5 April 2018 that was made absolute on 4 July 2018, can be set aside on the grounds of inadequate counsel for not advising PW on terms not favourable to her.

Submission By The Petitioner Wife (PW)

[7] The PW submitted that the application to set aside the said decree *nisi* was filed before the said decree *nisi* was made absolute. I have alluded to the case of *Liew Nyuk Ching v. Jong Khee Kie* [2013] 4 MLJ 930, where the decree *nisi* that was made absolute was set aside based on the merits of the case. In a Singapore case, *Low Choon Kung v. Tham Chan Kum* [2004] SGDC 139, where it was held that:

> Decree absolute was set aside. This decision illustrates not only that the decree absolute may be set aside, but the mere fact that a decree absolute had been issued is not an automatic bar to the rescission of the decree *nisi* … However, I am of the view that the court should have the power to rescind a decree absolute even if there has been procedural regularity in service, if circumstances exist which justify the rescission of the decree *nisi*. The reason for this that it would be wrong in principle if the court's ability to deal with a situation which warrants a rescission of the decree *nisi* (ie, by rescinding the decree *nisi*) depended on whether a decree absolute happened to have been issued or not. Thus, if the court sees fit to rescind a decree *nisi*, it should be able to do so, whether or not a decree absolute exists. If a decree absolute exists, then the court should also be able to rescind the decree absolute-indeed, if the decree *nisi* is rescinded, the decree absolute must also be rescinded, as the latter is an order which is issued to perfect the former, and should not be able to exist without it.

[8] By referring to r. 53 of the Divorce and Matrimonial Proceedings Rules 1980 ("DMPR 1980"), PW submitted that a decree is only made absolute on lodging a notice in Form 8. In the present case, PW submitted that she had filed this application (encl. 13) before any application was made to make the decree *nisi* absolute ie, before the filing of the said Form 8. I have alluded to the case of *Suci Mathews Nee Suci Thomas v. Thomas Mathews* [1985] 2 CLJ 496; [1985] CLJ (Rep) 788, [1985] 2 MLJ 228 where decree *nisi* was obtained on 26 April 1982 and the respondent later passed away on 25 February 1984 ie, two years after the decree *nisi* was obtained. Not knowing the respondent has passed away, the petitioner had on 26 April 1982 filed an application for the decree *nisi* to be made absolute which was eventually made absolute on 13 April 1984. However, after knowing that the respondent had passed away the petitioner then filed an application to set aside the decree *nisi* absolute. Applying the above authority, PW submitted that since PH has yet to apply to make the decree *nisi* absolute, PW is entitled to file this application to set aside the decree *nisi* dated 5 April 2018.

[9] By referring to s. 61 of the Act, PW submitted the decree *nisi* cannot be made absolute before the completion of the three months. In the present case, since the said decree *nisi* was granted by this court on 5 April 2018, therefore the three-month period should fall on 5 July 2018 and the said application to set aside the said decree *nisi* was filed on 4 July 2018 ie, before the three-month period has lapsed and therefore the merits of the case ought to be heard by this court.

[10] I was referred to the Interpretation Acts 1948 and 1967 which provides as follows:

104. Time of Commencement

Where any written law, or any part of a written law, or any instrument or notification made thereunder, is expressed to come into operation on a particular day, it shall, unless it be otherwise expressly provided, be construed as coming into operation immediately on the expiration of the day next preceding such day.

105. Computation of time

In computing time for the purposes of any written law, unless the contrary intention appears:

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;

(b) if the last day of the period is a weekly holiday or a public holiday (which days are in this section referred to as excluded days) the period shall include the next following day not being an excluded day;

(c) when any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) when an act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

54. Computation of time

(1) In computing time for the purposes of any written law:

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) if the last day of the period is a weekly holiday or a public holiday (referred to in this subsection as excluded days) the period shall include the next following day which is not an excluded day;

(c) where any act or proceeding is directed or allowed to be done or taken on a certain day, then, if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next following day which is not an excluded day; and

(d) where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of the time.

(2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

[11] By referring to r. 100 of the DMPR 1980, PW submitted that the court has the power for enlargement of time by either extending or abridging the time limited for doing any act, as long as it is just for doing so. And PW further submitted that the application is not prejudicial to PH.

Submission By The Petitioner Husband (PH)

[12] PH submitted that the said decree *nisi* was granted based on the consent given by both PH and PW when they filed a joint petition for divorce under s. 52 of the Act, and therefore PW cannot proceed under s. 61 of the Act to set aside the said decree *nisi*. PH further submitted that the present application before this court today is an abuse process of court which has the effect of re-litigating the joint petition for divorce when both PH and PW have agreed to file a joint petition for divorce and both of them were present during the court proceeding when the said decree *nisi* was granted by this court. I was alluded to the decision of Dr Choo Kah Sing J in *In Re Ng Boon Chwee & Anor* [2018] 1 LNS 744; [2018] MLJU 737, as follows:

[13] After a careful reading of the provision, this Court is of the considered view that s. 61(2)(b) of the Act only applies to a decree *nisi* granted under s. 53 of the Act, not to a decree *nisi* which was obtained under s. 52 of the Act. The former is a unilateral divorce petition; whereas, the latter is a joint divorce petition.

[14] The words of s. 61(2) of the Act in underscore denote that there are two opposing parties in the decree *nisi*: the words "by the party to whom it was granted" and "the party could have made" refer to the petitioner in a divorce petition, whereas, the words "the party against whom it was granted" refer to the respondent in a divorce petition.

[15] The above interpretation is fortified upon an examination of the powers which are accorded to the court under s. 61(2)(a) and (b) of the Act.

[16] Section 6l(2)(a) of the Act allows the court to issue a decree absolute upon application of the party against whom it was granted, the respondent. One reason why the respondent would want to move the court to issue a decree absolute is to enable the respondent to enter into another marriage with someone else.

[17] A Certificate of Making decree *nisi* Absolute (Form 9 of the Rules) must be issued before either party in the divorce may remarry) (see s. 62 of the Act). Hence, if a petitioner refuses, fails, neglects and/or omits to apply for a certificate under Form 9 of the Rules, the respondent cannot remarry if he/she wishes to do so. This will cause inconvenience and injustice to the respondent. Insofar as the court's records are concerned, the marriage between the petitioner and the respondent has been

dissolved and the decree *nisi* has become absolute. However, without the issuance of the certificate in Form 9 of the Rules by the court's registrar, the respondent will not be able to remarry.

[18] Section 61(2) (a) of the Act provides a remedy for the respondent. It allows the respondent to apply to the court for the issuance of the certificate, i.e. make the decree *nisi* absolute. Once a certificate in Form 9 of the Rules, i.e., Certificate of Making decree *nisi* Absolute, has been issued by the registrar, the respondent (and the petitioner) are free to marry again pursuant to s. 62 of the Act

[19] Section 61(2)(b) of the Act allows the court to rescind the decree *nisi* upon an application made by the party against whom the decree *nisi* was granted. The justification of this provision is that if the party to whom the decree *nisi* was granted is not interested to file and obtain a decree absolute after three months, the party against whom the decree *nisi* was made may apply to rescind it on the ground that the party to whom the decree *nisi* was granted was not serious to see through the proceedings to formally obtain a decree absolute, i.e. the certificate of Form 9 of the Rules.

[13] In *Lah Ah Chai v. Chong Mee Ling* [2004] 1 LNS 641; [2005] 2 MLJ 580, it was the decision of the court that:

3. On perusal of all documents submitted in this case, I am of the view that the petitioner husband has made full and frank disclosure to the petitioner wife prior to the joint petition dated 30 August 2002 of all the assets procured by the petitioner husband during the course of the marriage and before the said decree *nisi* was made absolute by this court on 16 October 2002 and that all the terms as stated in the joint petition were mutually agreed upon by both the petitioner husband and petitioner wife before the said joint petition was executed on 30 August 2002. The said decree *nisi* pertaining to the distribution of the matrimonial assets which was granted by this court is a final order. Therefore, the petitioner wife is estopped from applying for a variation of the said decree *nisi*. In the case of *Minton v. Minton* [1979] I All ER 79 Lord Scannan has stated the following at pp. 87 and 88:

> But the other, of equal importance, is the principle of the 'clean break'. The law now encourages spouses to avoid bitterness after family breakdown and to settle their money and property problems. An object of the modern law is to encourage the parties to put the past behind them and to begin a new life which is not overshadowed by the relationship which has broken down. It would be inconsistent with this principle of the court could not make, as between the spouses, a genuinely final order unless it was prepared to dismiss the application. The present case is a good illustration. The court having made an order giving effect to a comprehensive settlement of all financial and property issues as between spouses, it would be a strange application of the principle of the clean break if, notwithstanding the order, the court could make a future order on a subsequent application made by the wife after the husband had complied with all his obligations.

The Law

Whether The Decree Nisi Absolute Can Be Set Aside

[14] The Law Reform (Marriage and Divorce) Act 1976 (Act 164) ("the Act") provides instances and proceedings after decree *nisi*, as follows:

> 61. Decree *nisi* and proceedings thereafter.
>
> (1) Every decree of divorce shall in the first instance be a decree *nisi* and shall not be made absolute before the expiration of three months from its grant unless the court by general or special order from time to time fixes a shorter period.
>
> (2) Where a decree *nisi* of divorce has been granted and no application for it to be made absolute has been made by the party to whom it was granted, then, at any time after the expiration of three months from the earliest date on which that party could have made such an application, the party against whom it was granted may make an application to the court and on that application the court may:
>
> (a) notwithstanding the provisions of the last foregoing subsection, make the decree absolute;
>
> (b) rescind the decree *nisi*;
>
> (c) require further inquiry; or
>
> (d) otherwise deal with the case as it thinks fit.

[15] The Divorce and Matrimonial Proceedings Rules 1980 ("DMPR 1980") provides instances where a decree *nisi* is made absolute.

> 53. Decree absolute on lodging notice.
>
> (1) Subject to Rule 54 (1), an application by a spouse to make absolute a decree *nisi* pronounced in his favour may be made by lodging with the registrar a notice in Form 8.
>
> (2) On the lodging of such a notice, the registrar should search the court minutes and if he is satisfied:
>
> (a) that no appeal against the decree and no application for rehearing of the cause or for rescission of the decree is pending;
>
> (b) that no order has been made by the Federal Court extending the time for appealing against the decree or by a judge extending the time for making an application for rehearing of the cause or, if any such order has been made, that the time so extended has expired;
>
> (c) that no application for such an order as is mentioned in sub-paragraph (b) is pending;
>
> (d) that no intervention under Rule 49 is pending; or

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(e) that section 77 of the Act does not apply or has been complied with, the registrar shall make the decree absolute:

Provided that if the notice is lodged more than 12 months after the decree *nisi*, the registrar may require the applicant to file an affidavit accounting for the delay and may make such order on the application as he thinks fit or refer the application to a judge.

B

Order 92 r. 4 of the Rules of Court 2012 ("RC 2012") provides inherent power to the court to prevent injustice

C

Inherent powers of the Court (O. 92 r. 4)

For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

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Findings Of This Court

[16] The law on setting aside consent order is trite where once the consent judgment had been perfected, the parties are bound by it and the court is duty bound to enforce the agreed terms of the same. There are plethora of cases that holds a consent order must rarely be disturbed unless there are

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exceptional circumstances that warrant the intervention of the court and the burden is on the applicant to prove on balance of probabilities that the need to vary legally existed. In the case of *Ng Say Chuan v. Lim Szu Ling* [2010] 10 CLJ 371 where Yeoh Wee Siam J held that:

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[1] A consent order must rarely be disturbed unless there are exceptional circumstances that warrant the intervention of the court. Under s.96 of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'), the court has the discretionary power to vary the interim order for custody or maintenance of the children if there is any material change in the circumstances.

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[17] In *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75; [1998] 1 AMR 909, the Federal Court held that it is settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. In *Abdul Razak Sheikh Mahmood & Ors v. Amanah Raya Bhd & Ors And Another Appeal* [2018] 5 CLJ 273, Court of Appeal held:

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The law on setting aside consent judgment is more than settled and it is this. A consent judgment is only recorded when the respective litigants had agreed in writing as to how to resolve a legal suit. Once the consent judgment had been perfected, the parties are bound by it and the Court is duty bound to enforce the agreed terms of the same. The Court cannot

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vary any of the agreed terms unless with the mutual consent of the parties. Hence, one can say that the Court is *functus officio* or in other words, the Court is bereft of jurisdiction to entertain any request to set aside such judgment.

[18] It is to be noted that PW is applying to set aside the said decree *nisi* based on the provision of s. 61 of the Act. However, it is my considered view that s. 61 does not apply to a joint petition under s. 52 of the Act (as in the present case) but rather it only applies to a single petition under s. 53 of the Act and for that reason alone this application ought to be dismissed *in limine*. I am in agreement with the findings of my learned brother Dr Choo Kah Sing J in *Ng Boon Chwee & Anor* (*supra*) that s. 61(2)(b) of the Act only applies to a decree *nisi* granted under s. 53 of the Act, not to a decree *nisi* which was obtained under s. 52 of the Act because of the words of s. 61(2) of the Act denotes that there are two opposing parties in the decree *nisi ie*, the words "by the party to whom it was granted" and "the party could have made" refer to the petitioner in a divorce petition, whereas, the words "the party against whom it was granted" refer to the respondent in a divorce petition.

[19] In light of the foregoing, I am of the considered view that the marriage between PH and PW was legally dissolved on 4 July 2018, ie, upon the expiry of the three-month period after the said decree *nisi* was granted and the application in Form 8 of DMPR 1980, is merely a formality to complete the divorce proceedings. Insofar as the court's records are concerned, the marriage has been dissolved and the decree *nisi* has become absolute. I wish to refer to the submission by PW by referring to O. 92 r. 4 of the RC 2012, the inherent powers of this court to prevent injustice, but it is to be noted too that justice applies both ways and by setting aside an order that was perfected, sealed and the said decree *nisi* that had already become absolute by order of this court will be even more unjust to PH. The fact PH had delayed in lodging Form 8 is not a ground to set aside the decree absolute in the circumstances of this case since it is merely a procedural formality and does not go to the merit of the case. There must be lawful and appropriate extenuating circumstances to enable the court to exercise its powers and unfortunately in the present case no such circumstances had been presented. PW had agreed to the terms of the joint petition and to allow her to renege on those promises now in absence of lawful circumstances would be an unjust exercise of the court's inherent powers. There is no provision in the Act for the rescinding or setting aside a decree *nisi* that had already been made absolute. It is the intention of the legislator when the Act was framed to ensure the integrity and finality of a decree *nisi* that had become absolute. Parties are not allowed to freely apply to have it rescinded or set aside save and except in very exceptional cases or circumstances (see *Wong Cheng Ping v. Chin Guan Seng* [2009] 1 LNS 1627; [2010] MLJU 226, [2010] 5 AMR 171). It is noteworthy to mention that PW had waited until the last minute to file in this application when the same could have been done with greater haste within the three-month period before the said decree *nisi* became absolute. It is also my considered view that the three-month period for the said decree *nisi* to be made absolute is a reasonable enough time to allow

parties to appraise their respective situation prior to the absolute dissolution of the said marriage taking place. It is a time period as prescribed by the Act as framed by the legislators. The court is empowered to grant a lesser waiting period but not more than what is prescribed in the Act (s. 61(1) of the Act). Consequently, the issue of abridging or enlarging the time period does not arise. It is also noteworthy to mention that the acting solicitor who acted for both PH and PW during the joint petition has filed an affidavit confirming that PW had acknowledged the terms in the joint petition for divorce ("exh. KBK2" - encl. 34). Both of them were respectively impressed upon the terms in the joint petition for divorce where they finally agreed to it as prayed before the said decree *nisi* was pronounced by the court.

[20] I also would like to briefly address the argument by PW that her application is still before the said decree *nisi* became absolute contending that it falls on 5 April 2018. I refer to encl. 38 which is a sealed copy of the Certificate of Making Decree *Nisi* Absolute (Form 9) by the Senior Assistant Registrar of the High Court confirming that the decree *nisi* had become absolute on 4 July 2018 and the said certificate till to this date had not been set aside or challenged and remains valid.

Conclusion

[21] In light of the foregoing and after closely scrutinising the application and examining all evidence adduced before me, I dismissed PW's application (encl. 13) with no order as to cost.